

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ROGER MOORE,  
Plaintiff,

vs.

ANTHONY CALDERONE,  
BRANDON ALLEN, PAUL  
LUNKWITZ, BEN WATHEN and  
LESTER HERNDON,

Defendants.

2:10-CV-00034-PMP-RJJ

**ORDER**

Before the Court for consideration are Defendants' fully briefed Motion for Summary Judgment (Doc. #40) and Plaintiff's Motion for Leave to File Third Amended Complaint (Doc. #46). The Court finds Defendants' Motion for Summary Judgment (Doc. #40) must be granted, and Plaintiff's Motion for Leave to File Third Amended Complaint (Doc. #46) must be denied.

Specifically, the Court finds that having completed all discovery in this case, Plaintiff fails to show a genuine issue of material fact that regarding whether each of the acts alleged is a basis for his claims were not warranted by a valid penological purpose of Defendants. The Court further finds that Defendants are entitled to judgment on Plaintiff's Eighth Amendment Claim because Plaintiff has failed to exhaust available administrative remedies. Additionally, as noted in Defendants' Motion, Defendant Allen was not even employed by NDOC at the time

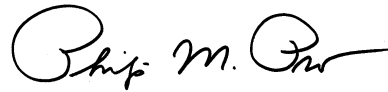
1 the acts alleged as a basis for Plaintiff's claims occurred.

2 Finally, Plaintiff has not shown any basis to warrant leave for permission  
3 to file a third amended complaint.

4 **IT IS THEREFORE ORDERED** that Plaintiff's Motion for Leave to File  
5 Third Amended Complaint (Doc. #46) is **DENIED**.

6 **IT IS THEREFORE ORDERED** that Defendants' Motion for Summary  
7 Judgment (Doc. #40) is **GRANTED**, and that judgment is hereby entered in favor of  
8 Defendants and against Plaintiff.

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10 DATED: March 18, 2011.

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PHILIP M. PRO  
United States District Judge